

Decision No. R04-0513

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04G-103EC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

CHARLOTTE M. HERRERA DOING BUSINESS AS
VALLEY WIDE MOVERS, LLC,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
KEN F. KIRKPATRICK
DISMISSING CIVIL PENALTY
ASSESSMENT NOTICE**

Mailed Date: May 18, 2004

Appearances:

Tony Muñoz for the Staff of the Commission; and

No appearance on behalf of the Respondent.

I. STATEMENT

1. This proceeding was instituted by the issuance of Civil Penalty Assessment Notice (CPAN) No. 28518. The CPAN is issued against “Charlotte M. Herrera, doing business as Valley Wide Movers, LLC.” By Order and Notice dated April 13, 2004 the matter was set for a hearing to be held on May 14, 2004 at 9:00 a.m. in a Commission hearing room in Denver, Colorado. At the assigned place and time the undersigned called the matter for hearing. There was no appearance on behalf of the Respondent. The undersigned Administrative Law Judge

(ALJ) called the Respondent and confirmed that Respondent had received notice of the hearing but was choosing not to attend. The hearing then went forth without the Respondent being present.

2. In accordance with § 40-6-109, C.R.S., the undersigned now transmits to the Commission the record and exhibits in this proceeding along with a written recommended decision.

II. FINDINGS AND CONCLUSIONS

3. This CPAN was issued against “Charlotte M. Herrera, doing business as Valley Wide Movers, LLC.” The undersigned ALJ ruled at hearing that the CPAN was issued against Charlotte M. Herrera individually.¹ The evidence established that Valley Wide Moving and Delivery is Valley Wide Movers, LLC. The evidence further established that Valley Wide Moving and Delivery is advertising service as a mover upon the public highways of this state in intrastate commerce without first being registered with this Commission. There was no evidence that Charlotte Herrera was operating, offering, or advertising services as a mover upon the public highways of this state.

4. Charlotte M. Herrera is the registered agent for Valley Wide Movers, LLC. Nonetheless, being a registered agent for an LLC does not make one liable for the activities of that LLC. Since there was no evidence of any violation of § 40-14-103(1), C.R.S., by Charlotte M. Herrera, the CPAN was dismissed.

¹ The testimony indicated that service of the CPAN was effected by personal service upon Ms. Herrera’s daughter.

5. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. Docket No. 04G-103EC, being a civil penalty assessment against Charlotte M. Herrera, is dismissed.

2. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

3. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

4. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge